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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Implementation of Section 309(j) of )  
the Communications Act -- )  
Competitive Bidding for Commercial )  
Broadcast and Instructional )  
Television Fixed Service Licenses )  
)  
Reexamination of the Policy )  
Statement on Comparative )  
Broadcast Hearings )  
)  
Proposals to Reform the )  
Commission's Comparative Hearing )  
Process to Expedite the Resolution of )  
the Cases )

MM Docket No. 97-234

GC Docket No. 92-52

GEN Docket No. 90-264

Comments of the Corporation for Public Broadcasting

The Corporation for Public Broadcasting ("CPB") hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM")<sup>1</sup> released November 26, 1997, in the above referenced proceeding by the Federal Communications Commission ("FCC" or "Commission"). CPB urges the Commission to carefully consider the implications of applying competitive bidding procedures to mutually exclusive applications for instructional television fixed service ("ITFS") stations. Such application will be problematic because ITFS

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1. In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses et al., Notice of Proposed Rulemaking, MM Docket No. 97-234, FCC 97-397, Adopted November 25, 1997, Released November 26, 1997.

licensees must be noncommercial educational programmers.

In the interest of economy, CPB has confined its individual comments to application of the proposed rules to ITFS stations. Other noncommercial broadcasting entities are commenting on the remaining issues presented in the NPRM, and CPB's decision to focus on ITFS issues is in no way intended to suggest that the other issues raised by the NPRM are not of critical significance to CPB. Therefore, regarding these other issues, CPB has joined as a signatory to and hereby incorporates by reference the comments of National Public Radio, Inc. and the National Federation of Community Broadcasters. In the same manner, CPB hereby endorses and incorporates by reference the comments of the Association of America's Public Television Stations.

**I. CPB Has a Vested Interest in Commenting in This Proceeding.**

CPB is the private, nonprofit corporation authorized by the Public Broadcasting Act of 1967,<sup>2</sup> to facilitate and promote a national system of public telecommunications. Pursuant to its authority, CPB has provided millions of dollars of grant monies for support and development of the public broadcasting stations, and for the production of instructional and educational television programs for use in schools. The myriad of instructional and educational programming funded by CPB and the Annenberg/CPB project<sup>3</sup> is distributed to

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2. 47 U.S.C. § 390 et. seq.

3. The Annenberg/CPB project is a division of CPB.

students through a wide variety of electronic delivery systems used by the stations, including multipoint microwave transmission systems such as ITFS. CPB has also allocated funds specifically for the development of ITFS technology, programming and distribution at public broadcasting stations. Thus, CPB has a direct interest in ensuring that the Commission's rules maximize access to ITFS educational programming by millions of students.

**II. ITFS Licensees are Nonprofit Educational Entities, and Applying Competitive Bidding Procedures Raises Difficult Public Policy Questions.**

ITFS stations are intended primarily to provide formal educational and cultural development in aural and visual form to students enrolled in accredited public and private schools, colleges, and universities.<sup>4</sup> Across the country, public television stations and statewide educational networks hold ITFS licenses. The public television community uses ITFS to foster education in a variety of innovative ways which benefit students. Teachers can supplement their lessons through video-on-demand services. Students in rural areas, where small populations limit academic offerings, can receive advanced classes through ITFS distance learning courses. In sum, public television's use of ITFS demonstrates that the educational goals for which the spectrum was set aside are being met.

By rule, ITFS licensees must be accredited educational institutions, or

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4. 47 C.F.R. § 74.931(a)(1).

government or nonprofit organizations.<sup>5</sup> Given the nonprofit status of these entities, applicants for ITFS licenses possess limited financial resources, and frequently depend on government budgets for funding. Thus, many licensees do not have the cash or asset reserves to engage in competitive bidding in an effort to acquire an ITFS license. The Commission itself recognized that educational institutions and organizations have limited staff and financial resources.<sup>6</sup> As such, the current application process recognizes the financial restrictions on ITFS licensees by not requiring a filing fee.<sup>7</sup> CPB urges the Commission to continue its commitment to keeping administrative costs associated with ITFS applications to a minimum.

In the NPRM, the FCC seeks comment regarding whether it should subject mutually exclusive applications for new ITFS stations to competitive bidding procedures.<sup>8</sup> Subjecting ITFS applicants to an auction may potentially impede the expansion of ITFS service. Competitive bidding rewards the applicant who is willing to spend the most to acquire a license. With respect to commercial services,

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5. 47 C.F.R. § 74.932(a).

6. In re Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 Ghz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, Report and Order, 68 Rad. Reg. 2d (P&F) 429, 433 (1990).

7. NPRM at ¶100.

8. Id. at ¶¶98-100.

such an outcome would be noncontroversial. However, the non-profit educational nature of ITFS licensees makes ITFS, like public broadcasting, anomalous. Since ITFS licensees do not operate on a for-profit basis, they do not have access to large capital reserves in an effort to "out-bid" their opponent. Many potential ITFS applicants could view an auction as an unwinnable proposition as bidding forces costs higher and higher. Therefore, the potential ITFS licensee may avoid filing an application due to fear of an expensive auction caused by the filing of a mutually exclusive application. If such avoidance occurs on a wide scale, ITFS expansion could be curtailed.

Another possible ramification of competitive bidding may be that ITFS applicants will be forced to rely on leasing their excess capacity to wireless cable operators. Under the Commission's rules, ITFS licensees may lease their unused capacity to wireless cable operators for non-educational uses, subject to certain conditions.<sup>9</sup> As the Commission well knows, the merits and disadvantages of allowing ITFS stations to lease excess capacity have been debated many times,<sup>10</sup> and CPB expresses no opinion on the leasing of excess capacity. However, under a competitive bidding model, ITFS applicants may be forced to seek out wireless cable operators with excess capital in an attempt to raise funds to win an ITFS license at

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9. 47 C.F.R. § 74.931(e)

10. Most recently, the Commission heard comment on the subject of ITFS leasing of excess capacity in the context of determining the appropriate length of lease terms. In re Amendment of Part 74 of the Commission's Rules with Regard to the Instructional Television Fixed Service, Report and Order, 77 Rad. Reg. 2d (P&F) 213, 222-3 (1995).

auction. ITFS applicants with little cash of their own may view an agreement with a wireless cable operator, to lease excess capacity in exchange for upfront financing, as the only available option for winning an ITFS license at auction. While the ITFS licensee is free to lease its excess capacity, an ITFS licensee who does not wish to do so should not be forced to enter into leasing agreements in order to finance acquiring a license. If the Commission is concerned about outside forces' influence on ITFS licensees,<sup>11</sup> auctions will virtually guarantee an expanded role for wireless cable companies financing ITFS projects.

The Commission must also carefully consider the public policy it creates if it subjects ITFS applicants to competitive bidding. Educational institutions were created to teach students — an altruistic pursuit. An ITFS license auction will pit educators against each other in a contest to determine who will spend the most money, not who will best use ITFS technology to prepare students. The Commission will not concern itself with which applicant will most effectively use the spectrum to educate. The auction will simply create a system that rewards the organization that is best financed.

CPB questions whether educational licenses should be sold to the highest bidder without regard to the buyer's identity. After all, education is a process

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11. The Commission solicited comment regarding ITFS licensee autonomy in the context of two-way ITFS transmissions in In the Matter of Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Notice of Proposed Rulemaking, MM Docket No. 97-217, FCC 97-360, Adopted October 7, 1997, Released October 10, 1997, ¶¶ 78-87.

whereby minds are enlightened, not a fungible commodity that can be freely traded. Nationwide, the issue of who will teach our students is the subject of continual public discourse and media emphasis, as education is valued as an essential component to our society. The current ITFS rules include a mechanism which favors service by local academic licensees who maximize their service proposals.<sup>12</sup> If comparative criteria such as those found in Section 74.913 of the Commission's rules are to be applied to any service,<sup>13</sup> educational programming is the proper place for such application so as to reward the best qualified, as opposed to best capitalized, applicants.

Treating ITFS applicants differently than those in other services would not depart from prior treatment of noncommercial licensees. The FCC has a long tradition of special treatment for noncommercial educational programmers.<sup>14</sup> CPB believes noncommercial educational programmers have a unique role in the communications industry, and would hope that the FCC consider continuing the tradition of Section 74.913 of its rules in evaluating an applicant's merits as part of the ITFS licensee selection process.

In sum, noncommercial educational ITFS licensees are not the same as

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12. 47 C.F.R. § 74.913.

13. The criteria reward service maximization, status as academic institution, localism, etc.

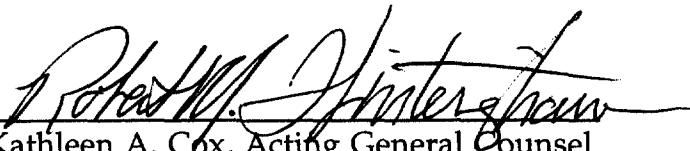
14. See, for example, Sixth Report and Order on Television Assignments, 41 F.C.C. 148 (1952), which set aside 242 channels for noncommercial educational use.

commercial service providers. Subjecting ITFS licensees to competitive bidding may adversely effect their continued independent service. ITFS auctions also raise significant public policy issues. CPB therefore beseeches the FCC to rule cautiously.

WHEREFORE, the Corporation for Public Broadcasting respectfully urges the Commission consider carefully the proposals made in the NPRM, and adopt the rules that will allow the best suited applicant to economically and efficiently obtain an ITFS license.

Respectfully submitted,

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